UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/755,832	01/05/2001	Brian Gerard Goodman	TUC920000050US1	5382

			EXAMINER
24033	7590	06/24/2004	PHAM, THOMAS K

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ART UNIT	PAPER NUMBER
2121	

DATE MAILED: 06/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/755,832	GOODMAN, BRIAN GERARD
	Examiner	Art Unit	
	Thomas K Pham	2121	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>05 January 2001</u>.
2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-36</u> is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) <u>1-36</u> is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All   b)☐ Some * c)☐ None of:
      1.☐ Certified copies of the priority documents have been received.
      2.☐ Certified copies of the priority documents have been received in Application No. _____.
      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
        application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date <u>10/19/01</u>.
4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application (PTO-152)
6)☐ Other: _____.

First Action on the Merits

1.   Claims 1-36 of U.S. Application 09/755,832 filed on 01/05/2001 are presented for

examination.

Quotations of U.S. Code Title 35

2.   The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim Rejections - 35 USC § 103

6.   Claims 1-11, 13-23 and 25-35 are rejected under 35 U.S.C. 103(a) as being unpatentable

over U.S. Patent No. 6,023,727 ("Barrett") in view of U.S. Patent No. 5,870,610 ("Beyda").

Regarding claims 1, 13 and 25

Barrett teaches updating code in a nodal system including at least two nodes, wherein each node

includes a processing unit and a memory including code, and wherein the nodes communicate

over a communication interface (fig. 1), comprising: transmitting, with at least one querying

node, a request to at least one queried node in the nodal system for a level of the code at the node

over the communication interface (col. 17 lines 1-2, "Microprocessor 173 sends and receives

network communications"), receiving, with one node, a response from the queried node

receiving the request indicating the level of code at the queried node over the communication

interface (col. 17 lines 2-4, "when a new program image ... into DRAM 175"). Barrett does not

specifically teach determining, with the node receiving the response, whether at least one queried

node has a higher code level. However, Bayda teaches an autoconfiguration system to identify

and detect device-specific software for automatic determine code level requirement to control the

device (col. 4 lines 54-65, "An autoconfiguration component 28 ... random access memory") for

the purpose of downloading the latest version of board-level software and resolving conflicts

among different devices without requiring user intervention. Therefore, it would have been

obvious to one of ordinary skill in the art at the time of the invention to incorporate the auto

identifying and detecting system of Bayda with the system of Barrett because it would provide

for the purpose of downloading the latest version of board-level software and resolving conflicts

among different devices without requiring user intervention.

Regarding claims 2, 14 and 26

Bayda teaches retrieving, with the node receiving the response, a copy of the code at the higher

code level queried node if one queried node has the determined higher code level (col. 3 lines 64-

67, "a private branch exchange ... a line card is added"); and Barrett teaches updating, with the

node retrieving the copy of the code, the memory with the retrieved copy of the code (col. 17

lines 4-7, "confirms that the new program ... compatibility is confirmed").

Regarding claims 3, 15 and 27

Bayda teaches the node receiving the response from the queried node and determining whether

the queried node has the higher code level comprises the querying node or a node that did not

transmit the request to the queried node (col. 4 lines 54-65, "An autoconfiguration component 28

... random access memory").

Regarding claims 4, 16 and 28

Barrett teaches broadcasting, with the queried node having the highest code level, the code to

multiple nodes over the communication interface, wherein the nodes retrieve the copy of the

code by reading the broadcast of the code on the communication interface (col. 1 line 62 to col. 2

line 3, "a reprogrammable network ... read only memory").

Regarding claims 5, 17 and 29

Bayda teaches determining whether one queried node has a higher code level is performed each

time the nodal system is reset or the querying node is reset independently (col. 4 lines 56-61, "a

device locator 30 ... resource requirements of the device").

Regarding claims 6, 18 and 30

Barrett teaches multiple querying nodes transmit the request for the code level to one queried

node, and wherein the queried node broadcasts information on the code level to the nodes (col.

10 lines 5-21, "because many communication protocol ... if compatibility is confirmed").

Regarding claims 7, 19 and 31

Barrett teaches the queried node serially broadcasts the code level information to the nodes (col.

27 lines 13-17, "Because serial port ... of NEB microprocessor 173").

Regarding claims 8, 20 and 32

Barrett all nodes in the nodal system transmit the request to the at least one queried nodes and

determine whether the queried nodes have the higher code level (col. 10 lines 5-21, "because

many communication protocol ... if compatibility is confirmed").

Regarding claims 9, 21 and 33

Barrett and Bayda do not teach each node has the same code set, wherein a portion of the code

includes instructions used by all the nodes in the system and wherein the code includes

instructions for functions used exclusively by each of the nodes. However, it would have been

obvious to one of ordinary skill in the art at the time of the invention that each of the devices

should have at least common portion of the firmware for communicates between nodes and at

least a unique portion dedicated for controlling each device individually.

Regarding claims 10, 22 and 34

Barrett teaches a first node is capable of controlling an accessor in a storage library system to

access storage cartridges and wherein a second node is capable of interfacing with a host system

and communicating commands from the host system to the first node to execute (col. 16 lines

23-32, "To reprogram a particular ... with the new image").

Regarding claims 11, 23 and 35

Barrett teaches the at least one querying node executes a routine to transmit the requests to the at

least one queried node, receive the response from the at least one queried node (col. 17 lines 1-4,

"Microprocessor 173 sends and receives ... into DRAM 175"), and Bayda teaches determine

whether the at least one queried node has a higher code level than a code level indicated in a

parameter in the memory, wherein the parameter is initially set to the code level of the querying

node (col. 4 lines 54-65, "An autoconfiguration component 28 ... random access memory").

7.   Claims 12, 24 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Barrett in view of Bayda and further in view of U.S. Patent No. 5,623,604 ("Russell").

Regarding claims 12, 24 and 36

Barrett and Bayda teach the automatic system for update device-level software into the memory

and updating the parameter with the code level at the queried nodes if the queried nodes have the

higher code level (col. 4 lines 54-65, "An autoconfiguration component 28 ... random access .

memory") but do not teach maintaining a parameter indicating the code level at the node;

initializing the parameter with the code level at the querying node before transmitting the

requests for the code level at the other nodes; and updating the parameter with the code level at

the queried nodes if the queried nodes have the higher code level. However, Russell teaches

maintaining a parameter indicating the code level at the node (col. 11 lines 2-6, "Control

firmware and ... for actual execution"); initializing the parameter with the code level at the

querying node before transmitting the requests for the code level at the other nodes (col. 11 lines

6-10, "Network and printer configuration ... has been cycled off and on") for the purpose of

allowing the software to recover the installation parameters after the system reboot. Therefore, it

would have been obvious to one of ordinary skill in the art at the time of the invention to

incorporate the system of Russell with the system of Barrett and Bayda because it would provide

for the purpose of allowing the software to recover the installation parameters after the system

reboot.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner *Thomas Pham*; whose telephone number is (703) 305-7587 and fax number is (703) 746-8874, Monday-Thursday and every other Friday from 7:30AM- 5:00PM EST or contact Supervisor *Mr. Anthony Knight* at *(703) 308-3179*.

Any response to this office action should be mailed to: **Director of Patents and Trademarks Washington, D.C. 20231**, or **Hand-delivered** responses should be brought to **Crystal Park II, 2121 Crystal Drive Arlington, Virginia, (Receptionist located on the 4th floor),** or fax to the **official fax number (703) 872- 9306.**

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

Thomas Pham
Patent Examiner

TP

June 23, 2004

Anthony Knight
Supervisory Patent Examiner
Group 3600